

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18**

TRUSTEES OF GRINNELL COLLEGE

Employer

and

**UNION OF GRINNELL STUDENT DINING
WORKERS**

Petitioner

Case 18-RC-228797

DECISION AND DIRECTION OF ELECTION

Petitioner filed a petition on October 9, 2018, seeking a unit of all student employment positions; excluding positions in dining services, and all supervisors and guards, as defined in the Act. The petition sought to add this proposed unit to the existing bargaining unit of student workers in the dining services department. During the hearing, the Petitioner amended its proposed unit by stating it was seeking to exclude student interns who work off campus, service learning work study participants, mentored advanced project (MAPs) participants, and non-student temporary workers. The Employer maintains that the unit sought by Petitioner is not appropriate because the student workers are not employees under Section 2(3) of the Act and the petitioned-for unit does not possess a community of interest. Petitioner and the Employer agree that the unit should exclude student interns who work off campus and non-student temporary workers; the parties are in disagreement over all other positions within the petitioned-for unit.

A hearing officer of the Board held a hearing in this matter and the parties orally argued their respective positions prior to the close of the hearing.¹ As explained below, based on the record and relevant Board law, I find that the student workers are employees under Section 2(3) of the Act and that the unit sought by Petitioner is appropriate.

STATEMENT OF FACTS

Overview of the Employer's Business and Structure

The Employer in this matter operates a liberal-arts college located at 1115 8th Avenue in Grinnell Iowa. The college has an undergraduate enrollment of approximately 1500 students and does not offer any graduate level programs. The college was founded in about 1846 and has remained in operation since that date.

The record is somewhat unclear regarding the overall structure of the Employer's administration. The college administration is headed by a president, who has an unknown number of vice-presidents and deans reporting to him. A number of these positions are relevant

¹ Both parties declined the option of filing post-hearing briefs.

to the issue of student employment at the college. The Assistant Vice President of Enrollment and Financial Aid coordinates student employment with the financial aid budget and regulatory requirements for the college. The associate dean in the Career, Life, and Services office (CLS) administers the college's service learning work study positions, while student research positions are coordinated, in part, through a faculty student research coordinator.

The Employer also maintains a centralized human resources position dedicated to issues related to student employment. This position is called the Human Resources Training and Student Employment Coordinator. This position is responsible for training faculty and staff regarding student employment; assisting supervisors with the process of hiring and firing of student employees; and ensuring that appropriate employment regulations are followed for student employees.

Student Employment Overview

The record reveals that there are approximately 900 student workers, plus those student workers who are employed in the dining service department, working at Grinnell at any given time,. These student workers work in a wide variety of positions for the Employer; a full listing of these positions can be found in Employer Exhibit L containing all student worker job descriptions. These positions include both work that is done on campus and work done away from the campus. The Union, however, based on positions it took on the record, seeks only to represent those employees who are employed on campus.

The record contains little, if any, detailed evidence regarding the day-to-day duties of the student workers across the various positions in the petitioned-for unit. The Employer submitted hundreds of pages of job descriptions for various positions at the college. The position descriptions are based on a standardized template that is created by the Human Resources Training and Student Employment Coordinator. In addition to creating a single template to be used in creating job descriptions across campus, the Human Resources Training and Student Employment Coordinator provides advice on what to include in job descriptions and is provided with the final job description. These job descriptions outline, among other items, basic position descriptions; qualifications and professional development; schedule and location of work; and physical and cognitive requirements for the positions. The qualifications and job duties for many of these positions vary widely; they were, however, supported by little, if any, testimony regarding terms and conditions of employment for any of the positions.

The Employer broadly contends that positions can be categorized into educational and labor work, as seen in Employer Exhibit A, page 24. Approximately seventy-eight percent of student workers are involved in educational work, which include academic support; classroom support; research; residential; learning/leadership; and career-oriented positions. The other twenty-two percent of students work in labor positions, which involve dining; lifeguarding; mail service; facilities; and "other" positions. Based on the job descriptions discussed above, these positions are further broken down into numerous departments at the college.

Across all student employment positions, the Employer maintains a standardized student employment handbook. This handbook governs many aspects of student employment. Amongst other policies, the handbook indicates that students can find work through a centralized electronic job board called “Handshake.” The handbook further indicates how employees are expected to keep track of time and when they are paid (specifically, the 12th and 27th of each month). As pointed out by the Employer, however, the handbook also clearly states that a primary goal of student employment is to further the educational experience of the students.²

In addition to this standardized handbook, certain classifications also maintain their own specific handbooks. These include handbooks covering the service learning work study program (discussed in more detail below); the information technology department; peer educators; and library staff.³ These handbooks contain both general policies and policies that are specific to certain areas (for example, an equipment return policy for IT student workers and requirements for outside partners for the service learning work study program). The record is unclear what other positions at the college maintain separate handbooks.

The record further demonstrates that many student workers hold more than one position at a time, as indicated by Employer Exhibit B. Based on the limited testimony of witnesses, it also appears that employees frequently will switch their positions while attending Grinnell (although it is unclear from the record exactly what percentage of student workers change jobs during their tenure with Grinnell).

The student workers on campus form an important part of the overall operations of the college. As stated in the Employer’s standardized employment handbook, and admitted to by the Employer’s Human Resources Training and Student Employment Coordinator, student workers “play a critical role in the operations of the college [and] [d]epartments on campus rely on this workforce to accomplish a substantial portion of the work necessary for daily operations.” The record is unclear, however, to what extent, if any, student workers in various positions interact with one another on a daily basis.

Day-to-day supervision of student employees is apparently handled within each department. It is unclear, with the exception of student research positions, the specific level of supervision provided within most departments. However, for student research positions which are supervised by faculty, the record reveals that the supervising faculty has the independent authority to hire student research assistants within an allocated budget, and also the authority to fire these research assistants. Outside of this specific example, the Employer, through its Human

² Beyond the general *student employment* handbook, the Employer also maintains a standard student handbook that applies to all students at the college. This student handbook contains a limited section related to employment, which states that students must be in good conduct and academic standing for certain leadership and safety-related positions.

³ The record also includes, as a rejected exhibit, an “Internship Orientation Student Handbook.” As discussed above, the parties stipulated that the students covered under this handbook were excluded from the petitioned-for unit. As such, I affirm that this exhibit was properly excluded on relevance grounds.

Resources Training and Student Employment Coordinator, retains central oversight in creating positions, terminating positions, and determining compensation levels.

All student workers are paid based off the same campus-wide wage scale, which is divided into five categories. Based on the Employer's wage matrix, the vast majority of the positions are paid on an hourly wage basis, although a handful of the positions listed in the matrix are salaried positions. The record is unclear the exact range of pay for positions in the proposed unit, although student workers who did testify stated that they were paid anywhere from approximately nine to twelve dollars an hour.

The source of student wages also varies across positions. The Employer spends about two million dollars annually on student wages, approximately two hundred thousand of which comes from federal funding. Certain positions are partially funded through federal student aid. Other positions which have a religious component are prohibited from being funded through federal aid. Students, however, are not generally made aware of whether their work is funded in part by federal aid, and there is no distinction in the level of compensation between employees who receive federal aid and those who do not.

The Employer caps the number of hours that students are allowed to work while class is in session at twenty hours per week, and forty hours a week at times when class is not in session. These caps apply regardless of the number of jobs worked by a student; even if a student works more than one job, they are only allowed to work a total of twenty hours combined across all jobs while class is in session. Beyond this universal hours cap, there is no evidence in the record regarding how schedules vary across the numerous positions in the proposed unit.

Off Campus Student Employment

In addition to these on-campus jobs discussed above, the Employer also compensates students in two categories for work done outside campus. The first type of position is student work internships done with outside organizations. The parties have stipulated to their exclusion from the unit, and thus this position will not be discussed further.

The second type of off-campus work that is compensated by the Employer is service learning work study positions. Petitioner, at hearing, amended its petition to exclude these positions; the Employer, however, did not consent to their specific exclusion, but maintained its general exclusion on the bases of its overall objection to the entire unit as not being 2(3) employees, and the lack of community-of-interest across the entire unit. The service learning work positions are coordinated with an "assigned community partner," who is an outside organization. Student workers in this position work at the assigned community partner, but are still employed by the Employer. The outside community partner is charged with interviewing potential student workers, and community partners are allowed to select the student worker that is "the best fit for their organization." In addition to their work for the community partner, students in these positions are required to attend monthly meetings at the Employer and two

career development workshops during the academic year.⁴ The job descriptions provided by the Employer indicate that outside partners include the Grinnell Chamber of Commerce; Grinnell Arts Council; Imagine Grinnell; Poweshiek Iowa Development; Crisis Intervention Services; and Mid-Iowa Community Action.

Mentored Advanced Projects

The Petitioner also seeks to exclude Mentored Advanced Projects (MAPs) positions from the petitioned-for unit. The Employer did not take a position on this specific exclusion, instead, when asked if they would stipulate to the exclusion, the Employer stated “I’d have to consider it,” and then prior to the close of the record, did not respond any further regarding this matter. However, it is apparent that the Employer would apply its overall objection to the unit to this position as well. According to the general student handbook, MAPs are designed to provide students an opportunity “to contribute to the original scholarship of the field of study and may be disseminated professionally through a scholarly publication, presentation, or prize submission.” MAPs are assigned a course number (499) and students are given academic credit for their work. They are additionally paid pursuant to a stipend. MAPs can, and often are, completed during the summer when most classes are out of session. There is no job description for the MAPs position, and they are not included in the wage matrix discussed above. MAPs positions, in contrast to other employment positions, are apparently approved by the Dean of Students and are not coordinated through the human resources department, according to the student handbook.

The Existing Bargaining Unit in Dining Services

As mentioned above, Petitioner seeks to combine the petitioned-for student worker positions into an existing bargaining unit in the dining services division. The dining services bargaining unit was certified via a Board election on May 12, 2016. According to Employer Exhibit A, page 24, approximately nineteen percent of student workers are currently employed in dining services; additionally, there are an unknown number of non-students who also work in dining services.

Since the bargaining unit was certified, the parties have negotiated two collective-bargaining agreements. The parties currently have a collective-bargaining agreement that is in effect until June 30, 2019.

ANALYSIS

Are Student Workers Employees Under Section 2(3) of the Act?

The Board recently addressed the question of whether graduate student and undergraduate student assistants qualified as statutory employees in *Columbia University*, 364 NLRB No. 90 (Aug. 23, 2016). The Board determined that these student workers qualified as

⁴ The Employer submitted six pages of a handbook related to these student work positions, which appears to be an incomplete copy. This summary of the service learning work study is derived primarily from that incomplete handbook.

employees under the Act. The Board first noted that the broad language of Section 2(3) indicated that Congress intended the Act to cover “any employee.” The Board next relied on the fact that, as opposed to other excluded categories of workers, there was no statutory language excluding student workers from coverage under the Act. *Id.*, slip op. at 1–2. Based on these statutory principles, the Board found that “it is appropriate to extend statutory coverage to students working for universities covered by the Act unless there are strong reasons *not* to do so.”

In reaching this finding, the Board considered and rejected its prior holding in *Brown University* that “the graduate assistants *cannot* be statutory employees because they ‘are primarily students and have a primarily educational, not economic, relationship with their university.’” *Id.*, slip op. at 2 (quoting *Brown University*, 342 NLRB 483, 487 (2004)). The Board, in *Columbia University*, concluded that this “educational rationale” could not overcome the plain language of the statutory scheme, and therefore “student assistants who have a common-law employment relationship with their university are statutory employees under the Act.” *Id.*

The test of whether a common-law employment relationship exists is, in turn, well-established and straightforward. A worker qualifies as a common-law employee where they 1) provide services; 2) under direction of the purported employer; 3) for compensation. *Id.*, slip op. at 1–2.

In applying the relevant precedent to this case, I first find that *Columbia University* applies to the student workers in the petitioned-for unit. There is no indication that any of the workers in the unit are more intrinsically intertwined with the educational relationship of the Employer than the teaching assistants in *Columbia University*. In fact, many of the student workers in the petitioned-for unit work in positions that are much less connected to the educational mission of the Employer than those at issue in *Columbia University* (for example, lifeguards and desk supervisors). Further, as in *Columbia University*, there is no indication that any other explicit statutory prohibition broadly applies to any employees in the petitioned-for unit.⁵

The Employer bases many of its arguments on the Board’s decision in *Brown University*—precedent which, as noted above, was overruled by *Columbia University*—and decisions issued under other statutes. Of course, I am without power to overturn extant Board precedent, and therefore, must follow the Board’s direction in *Columbia University*. As such, these arguments are unavailing.

⁵ There are some potential indications in the record that an unknown number of student workers may possess certain supervisory indicia. The Employer did not raise this issue in its Statement of Position, nor did either party explicitly attempt to address it during the hearing. Therefore, this issue is waived for purposes of this Decision. Further, to the extent that either party believes an individual should be excluded from the unit due to their supervisory status or any other statutory exclusion, they retain the option to challenge that individual’s vote during the election.

Beyond its arguments based on expired precedent and largely irrelevant case law, the Employer further contends that *Columbia University* should not apply to its student workers because they are undergraduate students who experience regular turnover every four years. This argument is unavailing for several reasons. First, the bargaining unit in *Columbia University* actually included undergraduate research assistants in the bargaining unit.⁶ Second, the statutory interpretation relied on in *Columbia University* applies with equal force to undergraduate student workers, as the Act does not distinguish between graduate and undergraduate workers. Third, to the extent the Employer argues that the turnover in the proposed unit makes it inappropriate for collective bargaining, the Board in *Columbia University* explicitly rejected this argument, emphasizing that the relatively short tenures in the bargaining unit did not invalidate the unit where this tenure was shared by all student workers. *Id.*, slip op. at 20; *see also University of Vermont*, 223 NLRB 423, 427 (1976). The same result follows here.

The Employer makes several additional arguments as to why collective-bargaining would be contrary to other laws and would deal a “fatal blow” to the Employer’s mission. These arguments, to the extent they have not already been directly addressed by the Board’s decision in *Columbia University*, are unpersuasive. The Board has consistently held that hypothetical conflicts with other statutes are meant to be handled in the collective-bargaining process, and do not otherwise serve as a bar to a representation election. *See, e.g., Columbia University*, 364 NLRB No. 90, slip op. at 12–13. The Employer’s contentions about how collective bargaining would affect financial aid, limit the number of jobs available to students, interfere with the ability to hire qualified students, negatively impact the egalitarian culture of the college, and otherwise undermine the college’s mission are speculative and not based on any concrete evidence. Indeed, the Employer’s experience with the existing bargaining unit in dining services provides at least some weight against these contentions. No witness was able to provide any example where the collective-bargaining process had conflicted with existing education law, nor were any witnesses able to point to an example of how the practice and procedure of collective-bargaining had undermined the college. In any event, these arguments do not permit me to disregard the binding precedent in *Columbia University*.

Having found that *Columbia University* is controlling, the remaining question to be addressed is whether the student workers in the proposed unit qualify as common-law employees. I find that they do. The numerous classifications all provide services to the college; indeed, the student employment handbook characterizes these services as “vital” to the operation of the college.⁷ These services are performed under the direction of the Employer’s human resources department, and specifically its Human Resources Training and Student Employment Coordinator, pursuant to job descriptions created by the Employer that lay out the duties and

⁶ The Employer contends, erroneously, that the bargaining unit in *Columbia University* only included graduate-level workers. This is clearly incorrect, as the Board decided “that the petitioned-for bargaining unit (comprising graduate students, terminal Masters’ degree students, and *undergraduate students*) is an appropriate unit.” *Id.*, slip op. at 2.

⁷ The Employer further argues, as an ancillary part of its argument against common-law employment, that the student workers cannot be employees because “if they were not students, the work opportunity would not be available to them.” This argument is foreclosed by *Columbia University*, as the unit certified in that case similarly consisted of positions that were only available to students at the college.

responsibilities of each position in the proposed unit.⁸ Finally, these positions all receive compensation, as indicated by the Employer's wage matrix. As such, I find that the proposed unit consists of common-law employees, and that therefore the student workers are covered under Section 2(3) of the Act.

Is the Petitioned-for Unit an Appropriate Unit Under the Act?

When determining an appropriate unit, the Board delineates the grouping of employees within which freedom of choice may be given collective expression. At the same time it creates the context within which the process of collective bargaining must function. Therefore, each unit determination must foster efficient and stable collective bargaining. *Gustave Fisher, Inc.*, 256 NLRB 1069 (1981). On the other hand, the Board has also made clear that the unit sought for collective bargaining need only be an appropriate unit. Thus, the unit sought need not be the ultimate, or the only, or even the most appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723, 723 (1996). As a result, in deciding the appropriate unit, the Board first considers whether the unit sought in a petition is appropriate. *Id.* When deciding whether the unit sought in a petition is appropriate, the Board focuses on whether the employees share a "community-of-interest." *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985). In turn, when deciding whether a group of employees shares a community-of-interest, the Board considers whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002). All relevant factors must be weighed in determining community-of-interest. The Board has further clarified that these same community-of-interest standards apply at academic institutions, such as the Employer's, as they apply in other employment settings. *Livingstone College*, 290 NLRB 304, 305 (1988); *Cornell University*, 183 NLRB 329, 336 (1970).

The Board has further held that a petition that seeks to represent all employees at an employer's facility (a wall-to-wall bargaining unit) is presumptively appropriate under the Act. *See* Section 9(b). This same presumption applies equally in the case of educational institutions, as explained by the Board in *Livingstone College*, 290 NLRB at 304–05:

In determining the appropriateness of a nonprofessional unit in a college or university environment, the Board applies the rules traditionally used to determine the appropriateness of a unit in an industrial setting. In this regard, a campus or collegewide unit, like a plantwide unit, is viewed by the Board as presumptively

⁸ The Employer argues that the directions provided under the outside research grants in *Columbia University* provides a level of direction that is not provided to student workers in the instant case. This argument is unavailing, and in my view actually supports finding a common-law employment relationship here. The student workers here (and their supervisors) uniformly testified that students performed work at the Employer's direction. This direction appears to have largely come *directly* from the Employer, as opposed to an outside organization supplying grants. Therefore, the Employer here exercises a greater level of direction than the employer in *Columbia University*.

appropriate under the Act. The burden of proving that the interests of a given classification of employees are so disparate from those of the others that they cannot be represented in the same unit rests with the party challenging the unit's appropriateness. . . .

See also Research Foundation of the City University of New York, 337 NLRB 965, 972 n.18 (2002).

Does a Wall-to-Wall Presumption Apply in this Matter?

Petitioner petitioned in this case to combine all student workers who work for the Employer into a single bargaining unit. As mentioned by the hearing officer at the outset of the hearing, the petitioned-for unit carries a presumption of appropriateness, which must be rebutted by the party seeking to exclude certain categories from the unit (in this case, the Employer). Over the course of the hearing, however, the parties agreed to exclude certain positions from the proposed unit, specifically students who worked at off-campus internships through the CLS office and non-student temporary employees. Additionally, on the record, Petitioner stated it seeks to exclude service learning work study positions and MAPs participants.

These exclusions raise an arguable issue as to whether the presumption stated at the outset of the hearing still applies to the petitioned-for unit. I find that this presumption still applies. The Board has held that exclusions for positions that only occasionally work at an otherwise wall-to-wall unit do not destroy a single facility presumption. *See, e.g., RB Associates, Inc.*, 324 NLRB 874 (1997). Here, the evidence demonstrates that the off-campus interns and service learning work study positions perform the vast majority of their duties off campus. These positions also perform work that primarily benefits the outside entities and, in contrast to other positions, are not performed to benefit the day-to-day operations of the Employer. Therefore, consistent with *RB Associates*, their exclusion does not remove the presumption.

As to the remaining exclusions, I also find that these do not otherwise remove the presumption in this matter. The MAPs position, as explained in more detail below, is almost entirely academic in character and does not constitute employment. The temporary casual employees who are on a leave of absence are, by definition, not student employees (as they are not students at the time of their employment). The Employer's student leave of absence employment policy confirms this fact, as it states "[a]lthough a leave of absence holds a place for you at the College to return to, you will not be considered a student here during the period of your leave." Further, given that students are limited to only two semesters of leave of absence, their status in this position is necessarily of a limited duration and temporary. As such, their exclusion does not rebut the presumption that applies in this case.⁹

⁹ At the outset of the hearing, the parties were put on notice that the petition sought a wall-to-wall unit. While on notice of the wall-to-wall nature of the unit, beyond these disputed classifications, the parties did not discuss any other positions on the record that could be included or otherwise would impact the wall-to-wall presumption in this case.

Did the Employer Rebut This Presumption?

Having determined that a wall-to-wall presumption applies to this unit, the burden is on the objecting party (in this case, the Employer) to demonstrate that the unit is nonetheless inappropriate. In the case of educational institutions, the Board has held that the objecting party must present evidence that a classification sought to be excluded from a wall-to-wall unit must possess interests that are “so disparate” from other classifications in the unit that they “cannot be represented in the same unit.” *Livingstone College*, 290 NLRB at 305. In order to rebut this presumption, the Employer was instructed at the outset of the hearing of the need to present specific, detailed evidence in support of its position that the petitioned-for unit does not possess a community-of-interest.

I find that the evidence presented in this matter falls far short of that necessary to demonstrate that any particular classification in the petitioned-for unit is so disparate that they are unable to be represented in the same unit. The Employer’s evidence largely related to policy arguments as to the various ways in which collective-bargaining would inhibit the educational mission of the college. The Employer failed to present detailed evidence regarding terms and conditions of employment for student employees, administrative structure, position functions, or other specific evidence related to community-of-interest factors. The evidence that the Employer did present related to this presumption, consisted largely of policy manuals and job descriptions that were unsupported by any context or testimony. The Board has held in similar circumstances that summary and conclusory evidence, like that relied on by the Employer here, is insufficient to rebut a presumption of unit appropriateness. *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999) (summary of interchanges between facilities, without supporting context, insufficient to rebut single facility presumption). As such, the Employer has failed to rebut the presumption that applies in this matter.

Is There Nonetheless a Community-of-Interest?

Moreover, even assuming that a presumption did not apply, a review of the community-of-interest factors supports finding the petitioned-for unit to be an appropriate unit. As discussed above, the traditional community-of-interest factors include the interchange of employees in the unit; shared terms and conditions of employment; common supervision; the Employer’s administrative organization of employees; and the level of skill and training required for the positions. . Taking these factors in turn, I find that the majority of these factors weigh in favor of finding a community-of-interest in the proposed unit.

The strongest factor in support of the community-of-interest in this unit is the level of interchange between employees in the unit. The record demonstrates that a large percentage of currently employed student workers concurrently hold more than one position in the proposed unit. Both workers and administrators further testified that employees often change positions within the proposed unit during their time at the college. This strongly supports a community-of-interest finding in the petitioned-for unit. *Executive Resource Associates*, 300 NLRB 400, 401

and n.10 (1991), citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1981) (declaring that “frequency of interchange is a critical factor” in community of interest analysis).

Many of the core terms and conditions of employment of employees in the proposed unit also support a community-of-interest finding. All employees are subject to the same strict cap in weekly hours. The employees are also compressed within a narrow wage band. There is also geographic proximity within the petitioned-for unit, as all employees work on the college’s campus. The employees are all subject to the same policies, as contained in the Employer’s standard employment handbook. The Board has consistently held that all of these factors support a finding of community-of-interest. *See, e.g., United Rentals*, 341 NLRB 540, 541–42 (2004); *Allied Gear & Machine Co.*, 250 NLRB 679, 680 (1980) (relying on similar wages, benefits, and work location in determining community-of-interest).

These positions are also functionally integrated with the operations of the Employer. Functional integration refers to when employees’ work constitutes integral elements of an employer’s production process or business. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Systems*, 311 NLRB 766 (1993). As frequently stated by the Employer’s witnesses, the Employer is in the business of providing education and support services to students. As acknowledged by the Student Employee Handbook, these student workers form an essential part of the Employer’s ability to perform the “day to day operations” which are vital to carrying out its educational and support services missions. Although the record is sparse regarding the amount of day-to-day contact between student workers across the various classifications, the fact that numerous employees hold multiple positions simultaneously further supports the functional integration in the proposed unit.

The remaining community-of-interest factors are insufficient to otherwise render the unit inappropriate. For example, while it is clear that the student workers in the dozens of classifications in this unit necessarily must have different immediate supervisors, the evidence demonstrates that this supervision is ultimately centralized through one individual—the Human Resources Training and Student Employment Coordinator. Similarly, while these student workers are in numerous administrative groupings throughout campus, they are also all ultimately within the rubric—indeed, comprise the entirety—of student workers on campus. Finally, while it appears from the job descriptions that certain positions in the unit require specialized skills, this is rebutted, at least in part, by the testimony from one administrator that “every job on campus is available to every student.” As such, considering the totality of the circumstances in this case, I find that the proposed unit is presumptively appropriate, and that in any event it shares a sufficient community-of-interest to form a suitable unit for purposes of collective bargaining.¹⁰

¹⁰ I further note that in fashioning overall or larger units, the Board is reluctant to leave a residual unit where the employees could be included in the larger group. *Huckleberry Youth Programs*, 326 NLRB 1272, 1274 (1998); *International Bedding Co.*, 356 NLRB 1336, 1337 (2011); *see also United Rentals, Inc.*, 341 NLRB 540, 542 fn. 11 (2004) (only unrepresented employees at facility included in unit despite sparse record of community-of-interest). The Employer here has not presented any smaller unit that would be appropriate, and it appears that cleaving the unit here along the Employer’s various departmental classifications would create numerous residual units.

Are Petitioner's Disputed Exclusions Appropriately Excluded from the Unit?

I first find that the service work learning position is appropriately excluded from the proposed unit. As opposed to every other position in the proposed unit, workers in these positions do not physically work on campus. They are not functionally integrated into the business of running the campus and facilitating teaching, as other student workers in the proposed unit. Rather, they perform their duties for outside parties. Further, while they are technically employed by the Employer, they are necessarily supervised by personnel at their off-campus jobsite. As a practical matter, including these employees in the bargaining unit would create a host of unique and difficult issues specific to the limited number of individuals who work off campus. As such, these employees are properly excluded. *See, e.g., Bradley Steel, Inc.*, 342 NLRB 215 (2004).

The parties also dispute the inclusion of Mentored Advanced Project positions in the unit. I find that these positions are also properly excluded from the unit. MAPs appear to be solely focused on furthering the educational goals of an individual student, as opposed to the overall goals or day-to-day operation of the Employer. MAPs are for academic credit, are assigned a course number (499) and are approved through the dean's office, not human resources.¹¹ These positions are not included in the Employer's wage matrix, nor are there any job descriptions for these positions. The only reference to these positions is in the general student handbook, where they are listed as a type of independent study. Further, as opposed to most, if not all, other positions in the unit, MAPs often are completed during the summer. As opposed to the hourly wages paid to other positions, MAPs are paid pursuant to a stipend. All of these factors way in favor of exclusion from the proposed unit.

The most tellingly factor in excluding the MAPs position is listed in the Employer's own academic handbook, which states that the "[p]roducts of MAPs are expected to contribute to the original scholarship of the field of study and may be disseminated through a scholarly publication, presentation, or prize submission." The fact that students may receive a stipend for completing these projects does not otherwise change their almost entirely academic character. In short, these positions focus on facilitating the individual students' academic achievement. This clearly distances MAPs from other educational jobs, such as research and teaching assistants, which are primarily focused on facilitating the teaching operations of the Employer. In reality, the evidence demonstrates that the MAPs position does *not* perform a service for the Employer, and therefore, individuals in those positions do not qualify as Section 2(3) employees. As such, MAPs are appropriately excluded from the unit sought by Petitioner.

¹¹ The Employer's president testified that there are certain employment positions that also receive academic credit, but was unable to identify any specific jobs where this was the case. My review of the record evidence does not disclose evidence of any other positions where students receive academic credit for their work.

Can the Proposed Bargaining Unit Be Appropriately Combined With the Existing Dining Services Unit Under *Armour-Globe*?

As to the remaining issue in this case, whether the proposed unit can be combined with the existing dining services unit under *Armour-Globe*,¹² I find that the Employer has waived this argument. The Board's Rules and Regulations clearly state that any matter not referenced in the pre-hearing statement of position is waived. § 102.66(d) ("A party shall be precluded from raising any issue . . . and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position . . ."). The Employer's Statement of Position, which is over 30 pages in length, raises many issues but makes no mention of whether the petitioned-for unit can be appropriately combined with the existing unit. Further, at the outset of the hearing, the Hearing Officer gave the Employer the opportunity to clarify whether it intended to make any arguments under *Armour-Globe*, and the Employer affirmatively stated it did not. Under these circumstances, there can be no question regarding the Employer's waiver of this argument.

Even assuming that the issue was not waived, I find that the petitioned-for unit can be integrated with the existing dining services unit. The Board has held that such additions are appropriate provided that the employees to be added constitute a defined group and share a community-of-interest with the existing unit. *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990); *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972). The same factors that support an overall community-of-interest in this case support the merger of these two bargaining units. As discussed above, employees in the petitioned-for unit frequently interchange with employees in the existing dining services unit. Indeed, employees in dining services often work simultaneously in other positions in the proposed unit. The units share similar wages and are ultimately all supervised by the same human resources department. They are functionally integrated with the Employer's overall mission, and work in close geographic proximity to one another. As such, allowing the petitioned-for unit to be combined with the existing unit is appropriate under Board law.

CONCLUSION

In determining that the unit sought by Petitioner is appropriate, I have carefully weighed the parties' arguments regarding the employee status of the student workers, whether the petitioned-for unit shares a community-of-interest, and whether the petitioned for unit shares a community-of-interest with the existing dining service unit, for which the petition seeks to combine it with. I conclude that the Board's decision in *Columbia University*, finding that student workers are employees under the Act, applies in this situation and that the student workers here are employees under the Act. I further find that the student workers in the petitioned-for unit form a presumptively appropriate wall-to-wall unit, and that in any event share a sufficient community-of-interest to form an appropriate unit. Lastly, I find that there is a

¹² The *Armour-Globe* formulation is derived from two early Board cases: *Armour & Co.*, 40 NLRB 1332 (1942) and *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

sufficient community-of-interest between the petitioned-for unit with the existing unit to order an *Armour-Globe* election that would result in a combined unit, if the petitioned-for unit votes in favor of representation.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹³
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All student employment positions.

Excluded: Positions in Dining Services, Service Work Learning positions, off-campus interns, Mentored Advanced Project (MAP) positions, non-student temporary employees, and supervisors and guards, as defined in the Act, as amended.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Union of Grinnell Student Dining Workers.

A. Election Details

¹³ The Employer, The Trustees of Grinnell College, a private nonprofit corporation for education purposes, is an institution for higher learning with its principal place of business in Grinnell, Iowa. During the past 12 months, a representative period, the Employer derived gross revenues in excess of \$1,000,000 and, during that same period of time, purchased and received at its Grinnell, Iowa facilities products, goods and materials valued in excess of \$50,000 directly from points outside the State of Iowa.

The election will be held on Tuesday, November 27, 2018 from 9:00 a.m. to 5:00 p.m. at Grinnell College, 1115 8th Avenue, Grinnell, Iowa, in the Joe Rosenfield Center, Room 101.

B. Voting Eligibility

Eligible to vote are those in the unit who had active logged work hours in payroll from September 16, 2018 to October 31, 2018¹⁴, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Wednesday, November 7, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be

¹⁴ On the record, the parties stipulated to an eligibility formula for anyone in the unit that had active logged hours in payroll between September 16, 2018 and October 15, 2018. In a follow-up question from the Region to the parties seeking clarification, the parties indicated the end date was based on the most recent pay date and that their stipulation should be extended to October 31, 2018. As this is a unique formula, of which the necessity for or later application is unknown, should the election be significantly delayed for any reason, the parties should be consulted regarding any eligibility formula that may later be applied.

used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: Monday, November 5, 2018

/s/ Jennifer A. Hadsall

JENNIFER A. HADSALL
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 18
Federal Office Building
212 Third Avenue South, Suite 200
Minneapolis, MN 55401-2657